Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 75-1870
E I. DU PONT DE NEMOURS AND COMPANY and
CHRISTIANA SECURITIES COMPANY,
Petitioners,
v.
RICHARD J. COLLINS, JR., LEWIS C. MURTAUGH,
Respondents.

No. 75-1872
SECURITIES AND EXCHANGE COMMISSION,
Petitioner,
v.
RICHARD J. COLLINS, JR., et al.,
Respondents.

BRIEF FOR RESPONDENT
Richard J. Collins, Jr., in Opposition

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BRIEF FOR RESPONDENT

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Respondent, Richard J. Collins, Jr., respectfully submits that the Petitions for a Writ of Certiorari filed in this case should be denied.

The opinion below, the basis of this Court's jurisdiction, and several of the statutory provisions involved are set out in the two petitions for a writ of certiorari and the Appendix to the

petition filed by the Securities and Exchange Commission (SEC Petition).

"App." refers to the appendix to the SEC petition, "C.A. App." refers to the joint appendix in the Court of Appeals, and "Collins App." refers to the appendix attached hereto.

QUESTION PRESENTED

The question presented is whether the Commission, in approving a proposed merger of an investment company into its controlled operating company should value the investment company essentially on the basis of the market value of its assets as well as the substantially lower market value of its own outstanding stock.

STATEMENT OF THE CASE

Christiana was created by its own stockholders or predecessors in order to control Du Pont. (App. 1a-3a). The other stockholders of Du Pont did not create it.

Both Christiana and Du Pont consistently deny that Christiana controls Du Pont. (C.A. App. 220, 461-462, 577-578, 607-608, 680).

The two negotiators for the DuPont Company were Messrs. Charles B. McCoy and Irving S. Shapiro. Mr. Shapiro did not own any Christiana stock, and in order to avoid any ripple Mr. McCoy gave his entire holding of 40 shares of Christiana to his grandchildren. (C.A. App. 574, 719)

Christiana, having been organized in 1915, had held its bloc of Du Pont stock during the entire business careers of Messrs. McCoy and Shapiro at Du Pont. (C.A. App. 421-424, 572-574; App. 1a).

Mr. McCoy's aggregate remuneration for the preceding year from the DuPont Company had been $272,600.00, and Mr. Shapiro had received $193,913.00 (C.A. App. 719)

After allowing for the gift by Mr. McCoy of his 40 shares Christiana, the Board of Directors of DuPont as a group owned 417,624 shares DuPont and 606,867 shares Christiana. (C.A. App. 719)

The Du Pont officers told its financial advisor, First Boston Corporation, that the big advantage to Du Pont would be freeing it from certain restrictions imposed by the Investment Company Act, which had impeded and delayed business decisions in the past. (C.A. App. 676, 677).

At the Commission's hearing, these same men had a different version and testified that the big advantage of the merger to the Du Pont Company would be the dispersal of the bloc of Du Pont held by Christiana, claiming so long as the bloc remained intact it was a potential threat in the future. (C.A. App. 452, 453, 576, 577).

As to the Investment Company Act's purported restrictions on Du Pont, its Chairman testified that little or no profits had been lost. (C.A. App. 609, 610). The Commission itself found there was no significant advantage to Du Pont in freeing it from the Act's requirements. (App. 20a).

The Commission also found there was no significant advantage to Du Pont in the dispersal of the bloc of stock held by Christiana (App. 18a, 19a).

On or about October 4, 1972, the Chairman of Du Pont, with an attached covering letter, sent to each of his stockholders a copy of the six-page Commission notice which described the proposed terms of the merger. (C.A. App. 846). His letter to his stockholders specifically said that they were not required to do anything at the present time. But at the end of the six page

notice from the Commission, which was enclosed with his letter, there was the statement that if anyone wished a hearing on the matter, he or she had to give written notice to the Commission by October 27, 1972. (C.A. App. A. 11f).

From the 225,000 Du Pont and 8,000 Christiana stockholders, the SEC received 15 responses of which five contained a request for a hearing. (Page 1 of the memorandum of Christiana and Du Pont in opposition to requests for a hearing. (Collins App. A-1).

The Manufacturers Hanover Trust Company had not sent a copy of the SEC notice to any of its co-fiduciaries because it believed the notice did not require any shareholder action. (C.A. App. 847-848).

Three Du Pont shareholders participated at the hearing and two of them are now before this court (App. 10a).

The Commission in summary found there was ". . . the striking disparity between the substantial benefits to be received by Christiana and the far more modest ones inuring to Du Pont." (App. 35a).

The Commission found that in economic reality Christiana stock was already Du Pont stock, and that the merger was an exchange of equivalents. (App. 9a). It also found that taxes take 7.2% of Christiana's earnings. (App. 11a).

The Court appointed Professor Upson to answer various questions, and in its Order appointing him as consultant expressly directed the Professor not to advise on the fairness or reasonableness of the terms. (Collins App. A-4). Du Pont and Christiana in their comments on the Professor's report stated that it did not in any respect contravene the evidence in the record before the Commission or the considered judgment of the Commission in rendering its decision. They did, however, repeat their objections to his appointment. (Collins App. A-2-3).

REASONS FOR OPPOSING THE WRIT

The Commission's approval of the merger is based on the idea that as a matter of law net asset value alone is the measure of fairness. If the grounds upon which the Commission's holding represent sound reasoning, the writ should be granted. *S.E.C. v. Chenery Corp.*, 332 U.S. 194, 209. But if the grounds for the approval cannot be sustained, then the writ should be denied. *S.E.C. v. Chenery Corp.*, 318 U.S. 80.

The Commission's petition for the writ contains conflicting statements.

First, in Commission's request for a one day extension to file its petition, the SEC states that Respondent asked that the merger terms reflect the full 23% discount that was the market value of Christiana. But it also states that Respondent urged that the merger terms be such as would reflect not more than one-half of the discount. (SEC Petition 10).

Second, on page 9 of the Commission's Petition, it states that the Court of Appeals held that the major criterion is the market value of Christiana's stock rather than its net asset value, but on page 8 it gives the correct holding of the Court that substantial weight has to be given to both the market value and net asset value of Christiana.

I

The Commission's Approval Was Based on Irrational Grounds.

The Court of Appeals properly rejected the Commission's use of only net asset value because it was based on irrational thinking shown by the six reasons given by the Commission for its holding. They are as follows:

1. The Court of Appeals method (substantial weight to both net asset value and market value) would cause serious problems in administering the Act (SEC Petition, page 10).

2. Net asset value alone furthers the important policy of eliminating unnecessary corporate holding companies (SEC Petition, page 11).

3. The underlying policy of the law is to protect shareholders of investment companies from loss caused by overreaching by affiliates, therefore, Du Pont may not bargain as though it were not affiliated with Christiana. (SEC Petition, pages 12, 13 and 17; App. 24a-25a).

4. The proposed transaction is the exchange of equivalents (App. 9a).

5. Anything other than net asset value would strip Christiana stockholders of their intrinsic value (SEC Petition, page 7 and 8; App. 33a).

6. The law prevents a closed end company from selling its stock below its current net asset value (note 8 on pages 18 and 19 of SEC Petition).

These six reasons are irrational.

First, the net asset method used by the Commission is all very simple as shown by the Commission. (App. 9a-10a). And it is true the method set by the Court requires more skill and judgment, but after all, what are the members of the Commission? Are they experts in the securities field, or are they mathematical clerks who can only say that if Christiana owns so many shares of Du Pont then each share of Christiana should be exchanged for so many shares of Du Pont—a problem to be solved by someone who knows his long division. Experts are supposed to tackle difficult problems—problems where informed judgment is required.

Du Pont and Christiana favor this simple arithmatical approach as shown by the fact that they filed a Memorandum with the Commission opposing a hearing on this merger.

Second, and perhaps the most glaring example of irrational thinking, is the belief that the net asset value exchange ratio will work to eliminate unnecessary holding companies.

As the Commission found, Christiana was organized to control Du Pont. The organizers in placing their Du Pont stock in Christiana could look forward to have the value of Christiana stock perform in several ways in relation to the value of the Du Pont stock.

a) There was the possibility of Christiana being worth a premium over that of the Du Pont stock due to the control element. Control stock, other things being equal, is more valuable than non-control stock. Such a situation would be all this and heaven too—nothing could be better than control plus an increase in market value of their own holdings at no cost to themselves.

b) There was the possibility that it would simply sell at par with Du Pont—this situation would be merely heaven, achieving control at no cost to themselves.

c) There was the possibility that it would sell at a discount below Du Pont—a situation somewhere this side of paradise, having the advantages of control with the disadvantages of lower dividends and individual net worth.

Christiana and Du Pont will deny before this Court that Christiana controls Du Pont, but the law itself and common sense will refute this denial. The law says that ownership of more than 25% of Du Pont creates presumption of control unless the Commission finds otherwise. Section 2(a) (9) of the Act—15 U.S.C. 80a-2(a) (9). The Commission has not found

otherwise. Aside from the law, with 28% of the stock held by Christiana, and the remaining held by over 225,000 persons, what reasonable doubt can there be about control?

The important points are that Christiana was created by the free acts of its own original stockholders—it was not created by other stockholders of Du Pont who became subservient stockholders in relation to Christiana—and the Christiana holders could look forward to the possibility that their own stock would command a premium plus the certainty that they would be in control of Du Pont. This gave Christiana shareholders the control not only of their own funds but also the command of the investment of the other Du Pont holders who are now being told that fairness requires that the Christiana holders be returned to their original position at little or no cost.

If the non-Christiana holders had put Christiana in its present position, there would be equitable grounds for saying that they must help Christiana. But Christiana's problems are its own making—and it was created with the sole purpose of dominating the other Du Pont shareholders.

If, as the Commission holds, it is important public policy to eliminate unnecessary holding companies, would Congress write a law guaranteeing that any time the stockholders of the controlling holding company become disenchanted with their position that they can initiate a merger with their controlled operating company and get back their original stock without cost?

This net asset value theory of the Commission is either an insurance policy or an escape hatch for holding companies in control of other corporations which, instead of discouraging holding companies, actually encourages them.

This net asset value theory of fairness allows the organizers of controlling holding companies to say: "Heads I win, tails you lose."

The controlling stockholder Christiana is overreaching its subservient fellow stockholders by receiving $450 million from a deal where the subservient receive $55.6 million—a ratio of 8 to 1. (SEC petition 5).

Third, the Commission reasons that the underlying policy of the law is to protect shareholders of investment companies from overreaching by the affiliated corporation.

Our frame of reference in this matter is that the law clearly states that Christiana is in control of Du Pont. Did Congress pass a law to protect the party who is in the control position from being overreached by the party it controls? The Investment Company Act does not mandate the dissolution of Christiana. Therefore, if Christiana does not like the terms proposed by Du Pont, it, as the controlling stockholder, can freely walk away from the deal. If any party needs protection, it is the party who is in the subservient position rather than in the controlling position.

The Commission in holding that the proposed terms are fair, and yet that but for the affiliation Du Pont may have had better terms, is going against both law and generally accepted standards. The law as to fairness of contracts between controlling and controlled corporations in that the measure of fairness is whether their terms would appeal to non-affiliated corporations. *International Radio Telegraph Co. v. Atlantic Communication Co.*, 290 F 698.

The Commission reasons as the underlying policy of the law is to protect shareholders of investment companies that Du Pont may not bargain for better terms. It readily admits that had there been no affiliation, Du Pont may have done so. (App. 24(a)).

Despite the fact that in form this is a statutory merger of two corporations, in reality it is a deal between the control-

ling stockholder and the subservient stockholders of the same corporation.

For over 50 years Christiana has controlled the other Du Pont holders—at this time, they should be allowed to bargain as an equal with Christiana.

The Commission justifies its decision by a meaningless platitude, "Some transactions are more important to one side than to the other. This one is of that type." (App. 20(a)).

Respondent states that the basic object of this merger, stripped of all the rhetoric, is to make money for stockholders. And money is just as important to the 225,000 Du Pont stockholders as to the 8,000 Christiana stockholders.

Fourth, the Commission is wrong in saying that the transaction is the exchange of equivalents.

The Commission reasons that as each share of Christiana has a net asset value of 1.15 shares of Du Pont, each Christiana share is the economic equivalent of 1.15 shares of Du Pont.

The fallacy of this view is that for two stocks to be economically equivalent, there must be a standard of measure. No one can say that two things are the same without a standard of reference. In the economic field, the standard is money.

A five dollar bill is the economic equivalent of fifty dimes; one English pound sterling is the economic equivalent of $1.75 only when it can be exchanged for $1.75; one share of Du Pont is the economic equivalent of $160.00 only so long as it is bought and sold for $160.00. And finally, so long as Christiana is selling at a discount from its net asset value it is not the economic equivalent of its net asset value.

Because of income taxes of 7.5%, Christiana can pay only 92½ cents for each $1.00 of Du Pont dividend received by it.

To hold that a stock paying 92½ cents dividend is the economic equivalent of one paying $1.00 dividend is clear error.

Fifth, a merger on other terms than net asset values should not be prohibited because, as the Commission holds, it would strip the Christiana holder of the intrinsic value of his holding.

If the Christiana holders had paid the full price for the intrinsic value of their holding, or if the non-Christiana holders themselves were responsible for Christiana's situation, there might be some merit in this argument.

Therefore, the Court should consider how the present holders of Christiana acquired their stock. As the original holders (who with their desire to control their fellow stockholders in Du Pont created Christiana) may be presumed to be dead (Du Pont-Christiana Petition, page 15), there are only three ways—by inheritance, by gift, or by purchase.

If he acquired the stock by inheritance, he paid less estate taxes than had he received Du Pont stock. *Mary A. B. Du Pont et al., Executors v. Commissioner of Internal Revenue*, 38 Bd. Tax Appeals 926 (1938).

If it was a gift, the same thing can be said as far as the gift tax. *Paulina Du Pont Dean v. Commissioner*, 19 TCM281 (1960).

If he bought the stock, it would have been at a discount, and by the Commission's standards, he robbed the previous owner of his intrinsic value. If it is wrong for non-Christiana holders to take away the intrinsic value, certainly the person who bought it on the market was committing a wrong—perhaps an even greater wrong depending on the discount.

The Commission, in talking about the evil of stripping Christiana holders of their intrinsic value, is saying that there is a double standard of justice depending upon who benefits from

the discount—if the Christiana holder benefits by paying lower taxes, or by purchasing in the open market it is fine—but for the other Du Pont holders who have been controlled by Christiana for over 50 years to take advantage of the discount it is all wrong.

Sixth, the Commission cites Section 23(b) (15 U.S.C., 80a-23(b)), which says that Christiana may not sell its stock at below net asset value.

The fact of the matter is that the Christiana corporation itself is not selling its own stock. This provision of the law is to prevent transactions such as Christiana selling some of its own stock to a party at less than net asset value and then continuing on in business. With a net asset value of 1.15 shares of Du Pont, and Du Pont selling at $100 per share, its net asset value would be $115 per share. Were it to sell a new share for less than $115 cash or 1.15 shares Du Pont, obviously the existing stockholders would be damaged. The market value of their stock would have to fall.

But here in reality Christiana is not selling its own stock—what is happening is through the merger the Christiana stockholder is surrendering so many shares of Christiana worth so much money and receiving so many Du Pont shares worth so much money. Now, as long as he receives something worth more than he surrenders, he is not injured; on the contrary, he is benefited.

II

The Market Value of Christiana's Own Stock Is Relevant in Setting the Merger Terms.

The Du Pont-Christiana petition cites Niagra Hudson Power Corp. v. Leventritt, 340 U.S. 336 (1951) as authority for claiming the market value of Christiana is irrelevant.

Respondent answers that had Christiana been selling at a 23% premium rather than a 23% discount they would be claiming that market value is very relevant indeed.

The *Niagra Hudson* case is out of place in this case. There it was shown that there was no reasonable hope that warrants would be exercised and hence they had no claim on the corporation assets despite their market value. Market value of the warrants had no meaning to the corporation or its business because there was little or no chance that they would be exercised.

But the market value of Christiana has meaning. Here are two parties under no legal compulsion to make a deal, and the market value clearly sets the lowest terms which Christiana would take just as the net asset value sets the highest terms it could reasonably expect. Christiana holders are not going to take less than they can get in the open market. Therefore, as market value here is one limit to the bargaining range, it has to be considered.

III

Persons Have a Right to Be Paid for Helping Others Out of Their Tax Problems.

A tax dollar is the same as any other dollar. If one can give another person a savings in taxes or in operating expense, or anything else, he should be compensated all the same. The saying by Judge Learned Hand to the effect that people are entitled to arrange their affairs so as to save taxes is all very true. But neither Judge Hand nor anyone else, with the exception of the Commission and the two corporations here, ever said that the taxpayer is entitled, *free of charge*, to have someone else cooperate in helping him save his taxes.

Furthermore, Du Pont and Christiana say that the reasoning behind the Court's opinion is that it used the term "Du Pont

family" as equivalent to "Christiana stockholder," and in their footnote state that Christiana is no longer a family enterprise. (Du Pont-Christiana Petition, 14-15).

This is contradictory to the Commission's finding—namely, "Christiana remains in overwhelming measure a Du Pont family affair." (App. 4(a)). With 75% of its stock held by the family, Du Pont and Christiana nevertheless are telling this Court it is no longer a family enterprise.

Section 42(a) of the Investment Company Act, 15 U.S.C. § 80a-42(a) provides in pertinent part: . . . "The findings of the Commission as to the fact, if supported by substantial evidence, shall be conclusive."

As to their complaint that the Court did not sufficiently identify the advantages that went with the control of Du Pont (Du Pont-Christiana petition 15), Respondent answers that only Rip Van Winkle would question them. The Commission in its opinion noted some well known facts of economic history. (App. 1a-3a; 20a, note 42).

To question that there are advantages in control of "one of the world's greatest industrial complexes" (App. 1a) is either playing games or woeful ignorance. Respondent would add that in addition to the Du Pont Company itself, the control also extended to General Motors Corporation for over 40 years until this Court ordered the divestiture.

IV

The Focal Point of the Court of Appeals Decision Was the Administrative Record.

The Court of Appeals in appointing the Professor as a consultant specifically directed that he was not to advise as to the fairness of the merger terms. (Collins App. A-4).

Such action was drastically different than that by the Judge in *La Buy v. Howes Leather Co.*, 352 U.S. 249 (1957), where he turned the case over to a Master with directions to report back on the facts and conclusions of law. In that case the Trial Judge practically turned the whole hearing over to the Master and was rightfully accused of abdication of the judicial function. That is in no way comparable with a direction not to advise as to the fairness of the merger terms.

This Court in *Federal Power Commission v. Transcontinental Gas Pipe Line Corp.*, — U.S. —, 46 L.Ed. 2d 533, quoted from *Camp v. Pitts*, 411 U.S. 138, 142, saying "The focal point for judicial review should be the administrative record already in existence, not some new record initially made in the reviewing court."

The term "focal point" means principal focus, and to say that the Court of Appeals here turned its principal focus away from the administrative record to the professor's report is simply not in line with the facts.

A thorough reading of the Court of Appeals decision clearly shows that the focal point for the decision was the administrative record.

V

The Non-Christiana Stockholders Were Inadequately Represented in the Deal.

First, Messrs. McCoy and Shapiro during the negotiations told their financial advisor, First Boston, one story and at the hearing told the Commission another story about the big advantage to Du Pont. The Commission found that neither story contained an advantage—worth a continental to Du Pont.

Second, Mr. McCoy's letter to his stockholders contained a serious error in telling them no action was required. Action indeed was required, if anyone wanted a hearing. The fact that only 15 replies were received from 225,000 stockholders is substantial evidence that the stockholders were misinformed.

The Commission declared that there was ". . . the striking disparity between the substantial benefits to be received by Christiana and the far more modest ones inuring to Du Pont." (App. 35a). The sole purpose of the prohibition against overreaching is to prevent a striking disparity between the benefits received by the two parties. What else can a striking disparity in benefits be than a case of over-reaching?

Being allowed to pool stock, form a controlling holding company, and then having the right by law to bail out at little or no cost, is unfair and overreaching the subservient stockholders.

CONCLUSION

For the foregoing reasons, the Petitions for a Writ of Certiorari should be denied.

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APPENDIX

MEMORANDUM OF CHRISTIANA SECURITIES COMPANY AND E.I. DU PONT DE NEMOURS AND COMPANY IN OPPOSITION TO REQUESTS FOR HEARING

Christiana Securities Company ("Christiana") and E.I. du Pont de Nemours and Company ("Du Pont") have filed a joint application under Sections 17 and 6(c) and Rule 17d-1 of the Investment Company Act of 1940 for Commission approval of a merger of Christiana into Du Pont. Christiana's principal asset is a block of Du Pont Common Stock comprising 28.3% of the stock outstanding. The merger terms provide for the issuance of Du Pont Common Stock in exchange for Christiana Common Stock on the basis of a 2½% discount from Christiana's adjusted net asset value, as more fully explained in the application, and issuance of Du Pont Common Stock with market value of $120, equivalent to the redemption price of the Christiana Preferred Stock, in exchange for each share of such stock. A Notice of Application was issued by the Commission on October 3, 1972, and the period for filing requests for hearing expired October 27, 1972. Pursuant to an understanding with the Staff, Christiana and Du Pont sent a copy of the Notice of Application to the approximately 8,000 Christiana stockholders and 225,000 Du Pont stockholders. Fifteen responses were filed with the Commission, of which five contained a request for hearing.

INTRODUCTION

Pursuant to the order of this Court dated October 9, 1975 and the communication from the Clerk dated December 12, 1975, Intervenors, E. E. du Pont de Nemours and Company ("Du Pont") and Christiana Securities Company ("Christiana"), submit their comments on the Report of Roger B. Upson. Intervenors' comments will be directed principally to those portions of the Report that bear on the two main issues before the Court. In Intervenors' view these issues are: (1) Should the Court sustain the determination of the Securities and Exchange Commission ("Commission") that the terms of the proposed merger of Du Pont and Christiana, which reflect the net asset value rather than the market value of Christiana stock, are fair and reasonable and do not reflect overreaching on the part of anyone, notwithstanding that the financial benefits to the Christiana stockholders will exceed those accruing to the Du Pont stockholders as a result of the merger; and (2) Should the Commission's determination be rejected on the ground that consummation of the merger would precipitate such a substantial volume of selling as to have an adverse impact on the market value of Du Pont stock to the disadvantage of all Du Pont stockholders. These comments will treat other aspects of the Report only to the extent that clarification or amplification appears necessary.

The Report of Professor Upson does not in any respect contravene the evidence in the record before the Commission or the considered judgment of the Commission in rendering its decision. To the extent, however, that he has departed from the record, while Intervenors will comment on his observations, they repeat the objections first raised in response to the Court's

initial suggestion which preceded Professor Upson's engagement. The record fully supports the Commission's determination in this case.[1]

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[1] This Court, in Arthur Murray, Inc. v. Oliver, 364 F.2d 28 (8th Cir. 1966), criticized the practice of adding evidence to the record outside the normal judicial process.

> "[F]rom the very nature of the judicial role, it is not given to a judge to engage in a prospecting quest for other evidence . . . to add to a record, nor counterpartly to appoint a master to make such a discovery pursuit for him. . . ." 364 F.2d at 34.

Likewise, in Baker v. Simmons Co., 325 F.2d 580 (1st Cir. 1963), the First Circuit overturned the use by a special master of an accountant to aid him in analyzing the record after it was closed, pointing out that the objecting party "now finds itself bound by whatever the accountant told the Master, without opportunity to cross-examine either as to his qualifications, his methodology, and the extent of his examination of the books or of his understanding thereof, or as to his actual conclusions" 325 F.2d 583. The Supreme Court has unequivocally cautioned against resort to *ad hoc* non-judicial assistance, particularly in complex matters. La Buy v. Howes Leather Co., 352 U.S. 249 (1957).

Under the relevant provisions of the Investment Company Act, it is the responsibility of the Commission rather than this Court to take additional evidence if such evidence is required. 15 U.S.C. § 80a-42(a).

ORDER

Before: Heaney, Stephenson, Circuit Judges,
Smith, Senior District Judge

Professor Roger B. Upson, Associate Dean of the University of Minnesota College of Business Administration, has been appointed by this Court as a contract consultant in the office of the Circuit Executive for the United States Court of Appeals for the Eighth Circuit. Professor Upson will assist the Court in understanding the record made in the above entitled case by the Securities and Exchange Commission, and will prepare reports and memoranda for the Court in connection with that function. His duties will not include giving opinions as to the fairness and reasonableness of the merger.

Reports made to the Court by Professor Upson will be filed with the Clerk of Court and copies of the reports will be furnished by the Court to counsel for the parties. The parties will be given an opportunity to respond to reports submitted by Professor Upson by filing with the Clerk of this Court a response thereto within five (5) days after the receipt of the report from the Clerk of Court.

The parties will not be required to bear the expenses incurred by the Court in retaining Professor Upson.

Dated: October 9, 1975.